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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:BR2

PLR-115291-10

Date:

June 25, 2010

Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

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Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

LLC =

Family A =

Family A Shareholders =

PLR-115291-10

Family B =

Family B Shareholders =

a =

b =

c =

Country X =

Business A =

Business B =

Business C =

Dear :

This letter responds to your April 5, 2010 request for rulings, submitted by your authorized representatives, on certain federal income tax consequences of a proposed transaction. The information submitted in that request and subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Proposed Transaction (defined below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.335-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing is the common parent of an affiliated group that files a consolidated federal income tax return. Distributing owns all of the stock of each of Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, and Sub 9, each of which is a domestic corporation. Distributing also owns all of the membership interests in LLC, an entity that is disregarded as separate from its owner for federal income tax purposes. Distributing recently formed Controlled, a domestic corporation. Controlled has authorized and outstanding a single class of common stock, which is wholly owned by Distributing.

Distributing and Sub 4 own all of the interests in Sub 10, which is treated as a corporation for federal income tax purposes. Sub 4 also owns all of the stock of each of Sub 11 and Sub 12, and, together, Sub 11 and Sub 12 own all of the stock of Sub 13. Sub 13 owns all of the interests in Sub 14, which is treated as a corporation for federal income tax purposes. Each of Sub 10, Sub 11, Sub 12, Sub 13, and Sub 14 is an entity formed in Country X.

Distributing, through members of its separate affiliated group, as defined in section 355(b)(3)(B) (the “Distributing SAG”), conducts Business A, Business B, and Business C. Following the Proposed Transaction, the Distributing SAG will conduct Business A, and Controlled, through members of its separate affiliated group, as defined in section 355(b)(3)(B) (the “Controlled SAG”), will conduct Business B and Business C. Financial information has been submitted indicating that Business A, Business B, and Business C each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing has a shares of common stock outstanding. The Family A Shareholders and Family B Shareholders (each consisting of members of Family A and Family B, and

trusts created for their benefit) together own all of Distributing's outstanding common stock; the Family A Shareholders own b shares and the Family B Shareholders own c shares.

The Family A Shareholders are involved with the operation of Business A, and the Family B Shareholders are involved with the operation of Businesses B and C (as currently conducted by Sub 1 and Sub 2, respectively). The Family A Shareholders and the Family B Shareholders have had significant disagreements regarding the future of the businesses conducted by the Distributing SAG and believe it is necessary to separate Business A from Businesses B and C.

Proposed Transaction

For what are represented to be valid business reasons, the following steps have been proposed (collectively, the "Proposed Transaction"):

- (i) Sub 5 will distribute cash and marketable securities to Distributing (the "Sub 5 Distribution").
- (ii) Distributing will transfer to Controlled all of the stock of each of Sub 1 and Sub 2, all of its membership interests in LLC (which holds land used by Sub 2), and other relevant assets (including all or a portion of the assets received from Sub 5 in step (i)) in exchange for additional Controlled stock and the assumption by Controlled of liabilities associated with the assets transferred (the "Contribution").
- (iii) Distributing will distribute all of the Controlled stock to the Family B Shareholders for all of the Distributing stock held by the Family B Shareholders in a value-for-value exchange (the "Distribution").
- (iv) Within sixty days of the Distribution, the assets and liabilities of Distributing and Controlled will be valued (as of the date of the Distribution). As a result of such analysis, Distributing may transfer to Controlled or Controlled may transfer to Distributing amounts necessary to effectuate an equal division of the assets and liabilities of Distributing at the time of the Distribution (the "Net Worth Adjustment").

In connection with the Proposed Transaction, Distributing and its subsidiaries, on the one hand, and Controlled and its subsidiaries, on the other hand, will enter into agreements relating to the separation of the businesses and certain continuing transactions, including: transitional administrative and other services agreements; agreements governing the sharing of tax liabilities, environmental liabilities, and certain other liabilities (the "Liability Agreement"); a transitional licensing agreement; a

restrictive covenant agreement; and certain purchase agreements (collectively, the “Transition Agreements”).

Representations

Distributing makes the following representations in connection with the Proposed Transaction.

- (a) The fair market value of the stock of Controlled to be received by each Family B Shareholder will be approximately equal to the fair market value of the Distributing stock surrendered by each such shareholder in the exchange.
- (b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) The Distributing SAG neither acquired Business A nor control of an entity conducting Business A during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, excluding in each case acquisitions that constitute expansions as contemplated by Treas. Reg. § 1.355-3(b)(3)(ii) of Business A. Throughout the five-year period ending on the date of the Distribution, the Distributing SAG has been the principal owner of the goodwill and significant assets of Business A and will continue to be such owner following the Distribution.
- (d) The Controlled SAG neither acquired Business B or Business C, nor control of an entity conducting Business B or Business C, during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, excluding in each case acquisitions that constitute expansions as contemplated by Treas. Reg. § 1.355-3(b)(3)(ii) of Business B and Business C. Throughout the five-year period ending on the date of the Distribution, the Controlled SAG has been the principal owner of the goodwill and significant assets of Business B and Business C and will continue to be such owner following the Distribution.
- (e) The five years of financial information submitted on behalf of Business A conducted by the Distributing SAG is representative of the present operations of the business and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) The five years of financial information submitted on behalf of Business B (as conducted by Sub 1) and Business C (as conducted by Sub 2) to be conducted by the Controlled SAG is representative of the present operations of each such

business and, with regard to each such business, there have been no substantial operational changes since the date of the last financial statements submitted.

- (g) Following the Distribution, the Distributing SAG and the Controlled SAG will continue the active conduct of its respective business, independently and with its separate employees (except as provided in the Transition Agreements).
- (h) The Distribution is carried out for the following corporate business purposes: (1) to prevent disharmony and management conflicts from adversely impacting the value of Distributing or any of its subsidiaries; (2) to allow top management to focus exclusively on the problems, opportunities, performance and profitability of their businesses; (3) to enhance the success of the businesses by eliminating inter-family and board of director conflicts. The Distribution is motivated, in whole or substantial part, by one or more of these business purposes.
- (i) The Proposed Transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (j) Distributing and Controlled, and their respective shareholders, will each pay their own expenses, if any, incurred in connection with the Proposed Transaction.
- (k) The total adjusted bases of the assets that will be transferred to Controlled in the Contribution will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of section 357(d)) by Controlled, and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing from Controlled and transferred to Distributing's shareholders or creditors pursuant to the plan of reorganization.
- (l) The total fair market value of the assets that will be transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled in the Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in the Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing in the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Distribution.
- (m) Any liabilities assumed (within the meaning of section 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
- (n) Distributing has no investment credit property (including any holdings to which section 47(d) applies).

- (o) Immediately before the Distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to Controlled's stock will be included in income immediately before the Distribution (see Treas. Reg. § 1.1502-19).
- (p) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Proposed Transaction.
- (q) No intercorporate debt will exist between Distributing, Controlled, and their respective subsidiaries at the time of, or subsequent to, the Distribution, except for any obligation to transfer value required by the Net Worth Adjustment, indebtedness arising under the Transition Agreements, and indebtedness created in the ordinary course of business through continuing transactions at terms arrived at by the parties bargaining at arm's length. Any indebtedness owed by Controlled (or its subsidiaries) to Distributing (or its subsidiaries) following the Distribution will not constitute stock or securities.
- (r) Payments made in connection with all continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (s) No two parties to the transaction will be investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (t) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (u) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution, or (ii) attributable to distributions on Distributing stock that was acquired by purchase

(as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.

- (v) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7)) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (w) Immediately after the Proposed Transaction (taking into account section 355(g)(4)), either (i) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)), or (ii) no person will hold a 50 percent or greater interest (within the meaning of section 355(g)(3)) in the stock of Distributing or Controlled that such person did not hold immediately before the Proposed Transaction.

Rulings

Based solely on the information submitted and the representations made, we rule as follows:

- (1) The Sub 5 Distribution will be a distribution of property to which section 301 applies. The amount of the Sub 5 Distribution will not be included in the gross income of Distributing and will reduce Distributing's basis in its Sub 5 stock Treas. Reg. §§ 1.1502-13(f)(2) and 1.1502-32(b)(2). Distributing's basis in the property received in the Sub 5 Distribution will be its fair market value. Section 301(d).
- (2) Sub 5 will recognize gain or loss with respect to the marketable securities distributed in the Sub 5 Distribution in an amount equal to the difference between the fair market value of the securities and Sub 5's adjusted basis in the securities (section 311(b) and Treas. Reg. § 1.1502-13(f)(2)), and such gain or loss will be taken into account by Sub 5 under the rules of Treas. Reg. § 1.1502-13.
- (3) The Contribution, together with the Distribution, will be a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled each will be "a party to the reorganization" within the meaning of section 368(b).
- (4) No gain or loss will be recognized by Distributing on the Contribution. Sections 357(a) and 361(a).
- (5) No gain or loss will be recognized by Controlled on the Contribution. Section 1032(a).

- (6) Controlled's basis in each asset received from Distributing in the Contribution will equal the basis of such asset in the hands of Distributing immediately before the Contribution. Section 362(b).
- (7) Controlled's holding period in each asset received from Distributing in the Contribution will include the period during which such asset was held by Distributing. Section 1223(2).
- (8) No gain or loss will be recognized by Distributing on the distribution of the Controlled stock in the Distribution. Section 361(c)(1).
- (9) No gain or loss will be recognized by (and no amount will be included in the income of) the Family B Shareholders on the receipt of the Controlled stock in exchange for shares of their Distributing stock in the Distribution. Section 355(a)(1).
- (10) The aggregate basis of the Controlled stock in the hands of each Family B Shareholder immediately after the Distribution will be the same as the shareholder's aggregate basis in the Distributing stock surrendered in exchange therefor, allocated in the manner described in Treas. Reg. § 1.358-2(a)(2). Section 358(a)(1) and (b).
- (11) The holding period of the Controlled stock received by each Family B Shareholder in the Distribution will include the holding period of the Distributing stock surrendered in exchange therefor, provided that the Distributing stock is held as a capital asset on the date of the Distribution. Section 1223(1).
- (12) The earnings and profits of Distributing, if any, will be allocated between Distributing and Controlled in accordance with section 312(h)(1) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).
- (13) Any payments between Distributing and Controlled that are made following the Distribution pursuant to the Net Worth Adjustment or the Liability Agreement regarding obligations that (i) have arisen or will arise for a taxable period ending on or before the Distribution or for a taxable period beginning before but ending after the Distribution, and (ii) will not have become fixed and ascertainable until after the Distribution, will be treated as occurring immediately before the Distribution. *Cf. Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

Caveats

No opinion is expressed about the tax treatment of the Proposed Transaction under any other provision of the Code or the regulations, or the tax treatment of any conditions

existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the rulings.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Proposed Transaction: (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is being used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both; or (iii) is part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii).

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Frances L. Kelly
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Corporate)